In the Supreme Court of the United States

OCTOBER TERM, 1972

Nos. 72-118, 72-119, 72-120, 72-121 and 72-128

FRED J. KROPKE, JOSEPH B. STAPLETON, PHILIPP W. KUNZ, BERNARD MURPHY AND WILLIAM A. STERNKOPF, JR., PETITIONERS

v.

UNITED STATES OF AMERICA

ON PETITIONS FOR WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

After a lengthy jury trial in the United States District Court for the District of New Jersey, petitioners—public officials and political leaders in Jersey City and Hudson County, New Jersey—were convicted on a number of counts of conspiracy and extortion. These included one count charging a conspiracy to affect interstate commerce by extortion from

contractors seeking contracts with the city or county, in violation of 18 U.S.C. 1951 (the Hobbs Act); one count charging a conspiracy to violate 18 U.S.C. 1952 (the Travel Act) by using the facilities of interstate commerce with intent to carry on the crimes of bribery and extortion in violation of the New Jersey law; and various substantive counts charging violations of the Hobbs Act. Sentences ranging from two years' imprisonment (with eighteen months suspended) to fifteen years' imprisonment were imposed; in addition, petitioner Sternkopf was also fined $20,000.

The gist of the conspiracy, which by the time of indictment was alleged to have continued for seven years, was the imposition upon the city and county administrations of a system whereby no one could do business with either without kicking back a percentage (usually 10 per cent) of the contract price. The kickback requirement was enforced in three ways: (1) by a "pre-qualification" arrangement which excluded from the competitive bidding process those contractors unwilling to make kickbacks; (2) by withholding payments for work already done until kickbacks were made; and (3) by not awarding contracts not subject to competitive bidding to anyone unwilling to make kickbacks.

In separate petitions for writs of certiorari, petitioners present the following claims: (1) that the conspiracy counts were unconstitutionally vague (Sternkopf as to the § 1952 count, Kropke as to both); (2) that there was a fatal variance between the extortions charged and those proved (Sternkopf and

Kunz); (3) that a single conspiracy was charged but multiple conspiracies were proved (Sternkopf, Kunz and Murphy); (4) that a severance was improperly denied (Kunz); (5) that the evidence was insufficient (Kunz); (6) that the indictment was invalid because it was based upon unlawfully obtained evidence and a harassing interrogation of a defendant who was denied permission to obtain counsel (Stapleton); (7) that suppressed evidence was improperly used to impeach defendants who testified in their own defense (Kropke and Stapleton); (8) that a hearing on a claim of unlawful search and seizure was improperly denied (Stapleton); (9) that the trial court improperly charged the elements of extortion under the Hobbs Act (Kropke); and (10) that money intended to be used for defense preparation was improperly admitted as government evidence (Murphy).

All of these contentions were fully considered and rejected by the court of appeals in its 44-page opinion. That opinion adequately expressly, and we believe properly accepts, our contentions with respect to these issues.

Petitioner Kropke makes one further contention not answered in the opinion of the court below. He contends that the indictment should have been dismissed as to him because he was called to testify before the grand jury and not warned that he was a target of the investigation. He was, however, explicitly advised both prior to his appearance and before the grand jury itself that he had the right to

refuse to testify and a right to consult with counsel. This was all that was required. The conflicting proposition enunciated in *Jones* v. *United States*, 342 F.2d 863, 867-870 (C.A. D.C.), upon which he chiefly relies, constituted the dissenting view and not the holding of that case. See 342 F.2d at 880.

It is therefore respectfully submitted that the petitions for writs of certiorari should be denied.

ERWIN N. GRISWOLD,
Solicitor General.

SEPTEMBER 1972.

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